



# State of West Virginia *Board of Medicine*

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EXECUTIVE DIRECTOR

## MEMORANDUM

**TO:** The Honorable Mac Warner  
Secretary of State

**FROM:** Mark A. Spangler, Executive Director  
West Virginia Board of Medicine 

**DATE:** March 26, 2020

**RE:** Temporary Suspension of Certain Provisions of 11 CSR 1B

The West Virginia Board of Medicine is the state agency charged with protecting the health and safety of the public through licensure, regulation and oversight of medical doctors (MDs), podiatric physicians (DPMs), and collaborating physician assistants (PAs).

On March 16, 2020, the Honorable Governor of the State of West Virginia, Jim Justice, declared a State of Emergency to address the COVID-19 pandemic and delegated "to all state agencies the ability to suspend rules, if strict compliance therewith would in any way prevent, hinder or delay necessary action in coping with the emergency."

On March 19, 2020, Governor Justice issued Executive Order 7-20, authorizing the suspension of certain regulations codified in the West Virginia Medical Practice Act, W. Va. Code § 30-3-1 *et seq.* and the West Virginia Physician Assistants Act, W. Va. Code § 30-3E-1 *et seq.* to suspend certain statutory provisions relative to the regulation of physician and physician assistant practice in West Virginia. On March 23, 2020, by way of Executive Order 10-20, Governor Justice amended the provisions of Executive Order 7-20, relating to the suspension of certain regulations related to physician practice in West Virginia. On March 25, 2020, by way of Executive Order 11-20, Governor Justice further amended the provisions of Executive Order 7-20, relating to the suspension of certain regulations related to physician assistant practice in West Virginia.

In accord with the March 16, 2020 Emergency Proclamation and Executive Orders 7-20, 10-20 and 11-20, the Board of Medicine respectfully requests that the following provisions of W. Va. Code R. § 11-1B-1 *et seq.*<sup>1</sup> be temporarily suspended:

<sup>1</sup> This morning, and after the preparation and Board approval of this temporary rule suspension memorandum, the Board learned that Governor Justice approved House Bill 4525, which authorizes the Board to file the legislative rule version of this rule. The Board will proceed with doing so apace, but due to the current state of emergency and the immediate need for a temporary suspension of the identified provisions, the Board currently seeks to suspend provisions of the emergency rule, which is currently in effect.

Rule Section	Temporary Suspension
11-1B-2.1.f  (suspend only the yellow highlighted strikethrough language)	2.1.d <del>f</del> . "Authorization to practice" means <del>written notification from the Board</del> that a physician assistant may commence practice <del>pursuant to an authorized practice agreement</del> in collaboration with physicians pursuant to an authorized practice agreement or an active practice notification.
11-1B-3.2  (suspend only the yellow highlighted strikethrough language)	3.2. An application for a license to practice as a physician assistant shall be completed on a form provided by the Board. The Board will not consider an application or decide upon the issuance of a license to an applicant until the complete application, including all third-party documentation or verification, is on file with the Board <del>and the Board has had at least fifteen days to review the application</del> . An application for licensure must be accompanied by payment of a nonrefundable application fee in an amount established by 11 CSR 4 <u>unless the applicant has applied for and been granted an initial licensing fee waiver as set forth in 11 CSR 13.</u>
11-1B-10.1  (suspend only the yellow highlighted strikethrough language)	<u>10.1. Before practicing pursuant to a license issued by the Board, a physician assistant must receive <del>written</del> authorization from the Board to commence practice.</u>
11-1B-10.2  (suspend only the yellow highlighted strikethrough language)	<u>10.2. Beginning on the effective date of this rule:</u>  <u>10.2.a. Physician assistants seeking authorization to practice in any practice setting other than a hospital shall, in conjunction with the collaborating physician, submit a practice agreement <del>and the appropriate fee</del> for Board approval in accordance with section 11 of this rule. Prescriptive authority for physician assistants practicing pursuant to a practice agreement is set forth in section 12 of this rule. The responsibilities of collaborating physicians who enter into practice agreements with physician assistants are set forth in section 13 of this rule.</u>  <u>10.2.b. Physician assistants seeking authorization to practice in a hospital shall, in conjunction with the hospital, file a practice notification <del>and the appropriate fee</del> with the Board as set forth in section 14 of this rule. Prescriptive authority for physician assistants practicing pursuant to an active practice notification is set forth in section 15 of this rule. The responsibilities of physicians collaborating with physician assistants in hospitals pursuant to active practice notifications are set forth in section 16 of this rule.</u>
11-1B-11.1	11.1. For all practice settings other than a hospital, a <del>A</del> proposed practice

(suspend only the yellow highlighted strikethrough language)	<p>agreement shall be completed on a form provided by the Board <del>and shall be accompanied by the appropriate fee. The fee for the submission of a practice agreement shall be one hundred dollars (\$100) until such time as a different fee is established by 11 CSR 4. A physician assistant may not commence practice pursuant to a practice agreement until he or she receives written authorization to practice from the Board.</del></p>
<p>11-1B-11.5</p> <p>(suspend only the yellow highlighted strikethrough language)</p>	<p>11.5. Upon receipt of a proposed practice agreement <del>and the appropriate fee</del>, the Board, through its staff, shall issue <del>a letter of</del> authorization to practice pursuant to the proposed practice agreement if:</p> <p style="padding-left: 40px;"><del>11.5.a. The proposed practice agreement conforms to the requirements of this section;</del></p> <p style="padding-left: 40px;">11.5.b. The physician assistant holds an unrestricted license;</p> <p style="padding-left: 40px;">11.5.c. Based upon the submitted information, it appears that the physician assistant is able to perform the proposed delegated duties <u>safely with reasonable skill and safety</u>; and</p> <p style="padding-left: 40px;">11.5.d. The practice agreement only proposes the delegation of core duties and/or <u>only includes</u> advanced duties:</p> <p style="padding-left: 80px;"><del>11.5.d.1. In a hospital or ambulatory surgical center which are included in the physician assistant's delineation of duties approved by the practice location;</del></p> <p style="padding-left: 80px;"><del>11.5.d.2. For which general approval protocol has been established by the Board and the physician assistant has met such protocol;</del></p> <p style="padding-left: 80px;">11.5.d.3. <u>The Board has previously authorized the physician assistant has previously been authorized by the Board to perform; and/or</u></p> <p style="padding-left: 80px;"><u>11.5.d.3. Which will be performed in an ambulatory surgical facility.</u></p>
<p>11-1B-11.9</p> <p>(suspend only the yellow highlighted strikethrough language)</p>	<p>11.9. The Board may decline to authorize a physician assistant to <del>commence</del> practice pursuant to a proposed practice agreement if the Board determines that:</p> <p style="padding-left: 40px;">11.9.a. The practice agreement is inadequate and/or incomplete;</p> <p style="padding-left: 40px;">11.9.b. The proposed delegation exceeds the appropriate scope of practice; or</p> <p style="padding-left: 40px;">11.9.c. The collaborating physician and physician assistant have failed</p>

	to establish that the physician assistant is able to perform the proposed delegated duties <u>safely with reasonable skill and safety.</u>
11-1B-11.10  (suspend only the yellow highlighted strikethrough language)	<p>11.10. A new practice agreement, <del>with the required fee,</del> must be filed for approval by the Board if:</p> <p style="padding-left: 40px;"><del>11.10.a. A collaborating physician and physician assistant seek to change or add to the delegated medical acts in an approved practice agreement;</del></p> <p style="padding-left: 40px;"><del>11.10.b. A collaborating physician and physician assistant seek to change the physician assistant's practice setting and/or principle place of practice;</del></p> <p style="padding-left: 40px;">11.10.c. A physician assistant seeks to enter into a practice agreement with a different collaborating physician;</p> <p style="padding-left: 40px;">11.10.d. A physician assistant seeks to resume practice after reinstatement of licensure; or</p> <p style="padding-left: 40px;">11.10.e. The Board has requested the submission of a revised practice agreement as a result of any investigation, discipline or audit activity.</p>
11-1B-11.12  (suspend only the yellow highlighted strikethrough language)	<p><u>11.12. A physician assistant may submit address changes and additional practice locations to supplement an authorized practice agreement if the collaborating physician, scope of practice, <del>delegated medical acts, collaboration mechanisms</del> and practice setting remain the same.</u></p>
11-1B-13.2.d  (suspend only the yellow highlighted strikethrough language)	<p><u>13.2.d. For physician assistants in the first six months of an authorized practice agreement and who have practiced as a physician assistant for less than one year, periodic, in person, education and review sessions discussing specific conditions, protocols, procedures and specific patients shall be held by the collaborating physician for the physician assistant <del>in accordance with the terms of an authorized practice agreement. The collaborating physician and physician assistant must retain written documentation of these meetings.</del></u></p>
11-1B-13.4  (suspend only the yellow highlighted strikethrough language)	<p><u>13.4. A collaborating physician may designate alternate collaborating physicians. To serve as an alternate collaborating physician, an individual must hold an unrestricted license to practice medicine and surgery, osteopathic medicine or podiatry in this state. <del>An alternate collaborating physician shall accept collaborative responsibility for periods of time not to exceed forty-five days.</del></u></p>

language)	
11-1B-13.5  (suspend only the yellow highlighted strikethrough language)	<p><u>13.5. An alternate collaborating physician shall collaborate with the physician assistant in accordance with an authorized practice agreement and shall only delegate medical acts that are:</u></p> <p style="padding-left: 40px;"><u>13.5.a. Contained within the authorized practice agreement; and</u></p> <p style="padding-left: 40px;"><u>13.5.b. Within the scope of practice of <del>both the collaborating physician and the</del> alternate collaborating physician.</u></p>
11-1B-13.6	<u>13.6. A collaborating physician may enter into practice agreements with up to five physician assistants at any one time.</u>
11-1B-13.7	<u>13.7. A physician is prohibited from entering into practice agreements as a collaborating physician or an alternate collaborating physician with more than five physician assistants at any one time.</u>
11-1B-13.8  (suspend only the yellow highlighted strikethrough language)	<p><u>13.8. In the event of the sudden departure, incapacity, or death of a collaborating physician, and in order to provide for continuity of care for patients:</u></p> <p style="padding-left: 40px;"><u>13.8.a. An alternate collaborating physician may temporarily assume the role of collaborating physician; and</u></p> <p style="padding-left: 40px;"><u>13.8.b. If the practice agreement does not designate an alternate collaborating physician, a physician holding an unrestricted West Virginia license may temporarily assume the role of collaborating physician upon receipt of <del>written</del> permission from the Board's staff.</u></p> <p><u>A physician who assumes the responsibility of collaborating physician pursuant to this subsection shall submit a complete practice agreement to the appropriate licensing board within <del>fifteen days of assuming the responsibility. The Board, through its staff, may extend the fifteen day period for up to thirty additional days upon a determination that the temporary authorization is in the public interest, does not jeopardize patient safety and is necessary to provide continuity of care for patients.</del></u></p>
11-1B-14.2  (suspend only the yellow highlighted strikethrough language)	<u>14.2. A practice notification shall be completed on a form provided by the Board <del>and shall be accompanied by the appropriate fee. The fee for the submission of a practice notification shall be one hundred dollars (\$100) until such time as a different fee is established by 11 CSR 4.</del></u>

11-1B-14.3	<u>14.3. A physician assistant may not commence practice pursuant to a practice notification until the Board provides written notification to the physician assistant and the hospital that a complete practice notification has been filed with the Board. The Board's written notification activates the practice notification and provides the physician assistant with authorization to practice in the identified hospital(s).</u>
11-1B-14.6 (suspend only the yellow highlighted strikethrough language)	<u>14.6. A practice notification is complete when it conforms to the requirements of this section <del>and is accompanied by the appropriate fee.</del> The Board may return an incomplete practice notification unprocessed, and may request additional information from the hospital or physician assistant to obtain information necessary to complete the practice notification.</u>
11-1B-14.7 (suspend only the yellow highlighted strikethrough language)	<u>14.7. Upon receipt of a complete practice notification <del>and the appropriate fee,</del> the Board shall provide the physician assistant and hospital written notice that the physician assistant is authorized to practice in the identified hospital(s).</u>
11-1B-14.10 (suspend only the yellow highlighted strikethrough language)	<u>14.10. A new practice notification, <del>with the required fee,</del> must be filed for approval by the Board if the physician assistant seeks to practice at a hospital not listed in an active practice notification.</u>
11-1B-20.2 (suspend only the yellow highlighted strikethrough language)	<u>1620.2. If the Board determines the evidence in its possession indicates that a physician assistant's continuation in practice or unrestricted practice constitutes an immediate danger to the public, the Board may take any of the actions provided in W. Va. Code §30-3-14(j) on a temporary basis and without a hearing if institution of proceedings for a hearing before the Board are initiated simultaneously with the temporary action and <del>begin within fifteen days of the action. The Board shall render its decision within five days of the conclusion of a hearing under this subsection.</del></u>

Memorandum  
Temporary Rule Provision Suspension  
W. Va. Code R. § 11-1B-1 *et seq.*  
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Board of Medicine licensees are on the front line of the COVID-19 epidemic, and the Board is committed to seeking emergency measures to assist them as they work to protect and serve the citizens of West Virginia. These temporary rule suspensions will facilitate protection of the public by encouraging provider surge, availability and agility of physician assistants to practice in West Virginia, and reducing regulatory strain on providers and government during the state of emergency.

Thank you for your time and attention to this request. If granted, the Board of Medicine further requests that the identified rule provisions be suspended until the State of Emergency is lifted.